

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current agreement Electrician R. W. Pearson was unjustly treated when assessed a thirty (30) day suspension by the National Railroad Passenger Corporation (Amtrak), reduced to time held out of service nine (9) actual days.
2. That accordingly Electrician R. W. Pearson be compensated for the period he was held out of service, with all benefits that are a condition of employment unimpaired, reimbursed for all loss sustained, all insurance benefits, all seniority rights, all vacation rights restored and the removal of all the charges from his personal file.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

R. W. Pearson, Claimant, entered Carrier's service on July 18, 1977. At the time of the incident involved herein Claimant held the position of Electrician, employed in the Coach Shop at Carrier's Beech Grove Maintenance Facility, Beech Grove, Indiana. On March 21, 1979, while on duty, Claimant failed to comply with General Foreman R. Collins' warning to leave the area in which the employes take their break because the break period had not yet arrived. By placing himself in that area, the Claimant also failed to attend to his duties during the prescribed time by being absent from his work area.

By letter dated March 21, 1979, Claimant was notified that he was being held out of service pending further action in connection with his insubordinate behavior. In a second letter, dated March 21, 1979, Claimant was notified to attend a formal investigation on March 29, 1979, in connection with the following charges:

- "1. Insubordination, by failure to comply with instructions from General Foreman Collins at approximately 8:58 AM on March 21, 1979.

2. Violation of Rules I & J of the N.R.P.C. Rules of Conduct by your insubordinate and quarrelsome actions at approximately 8:58 AM on March 21, 1979.
3. Violation of Rule K of the N.R.P.C. Rules of Conduct by failure to attend to your duties during the hours prescribed by being out of your work area at approximately 8:58 AM on March 21, 1979."

The cited rules read as follows:

- "I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will."
- "J. Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, fighting, horseplay, threatening or interfering with other employees or while on duty is prohibited."
- "K. Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

The investigation was held as scheduled. At such hearing, General Foreman R. Collins read his prepared statement as follows:

"At approximately 8:57 AM, March 21, 1979, Acting General Foreman P. Roby and I were assigned to go to the Truck Shop area to check on people leaving the area for breaktime which is 9:00 o'clock.

Upon leaving the General Foreman's office, Mr. Roby and myself started around the Northwest corner of the Material Cage. There were approximately 7 or 8 employees standing next to the cage area. At this time, we stopped and I asked the people standing there if they wanted me to start taking names. Some of the employees started leaving. One employee by the name of Mr. Pearson looked at his watch and told me that it was one minute before 9:00 and made no attempt to leave the area.

At this time, I asked Mr. Pearson what his name was and Mr. Pearson screamed his name at me and started to walk off. His raucous tone of voice and belligerent attitude was most unbecoming in one of our employees. I told him to come back again and he finally turned around and walked back to where I was standing. I then told Mr. Pearson to follow me. I went around to the West side of the Cage area and asked Mr. Plemen to meet me there. I instructed Mr. Plemen that I wanted this man taken out of service for Insubordination..."

Cross-examination did not dilute the cogency of Mr. Collins' conclusions. Acting General Foreman Paul Roby made the following statement:

"At approximately 8:57 AM, March 21, 1979, General Foreman R. Collins and I went around the corner of the Material Cage and saw some employees standing there. General Foreman Collins said, 'Fellows, do you want me to start taking names?' At this point, most of the individuals turned to walk away toward their work area.

One man held his arm up, look at his watch and said, 'If you wait a minute, the horn will blow.' At this time, Mr. Collins said 'Hey Buddy, you are not supposed to be here.' He screamed at Mr. Collins, 'My name is Pearson'. Mr. Collins said, 'Don't scream at me', and Pearson turned to leave. Mr. Collins said, 'Come back here', and Pearson just kept walking. Mr. Collins said louder, 'Come back here', then Pearson came back and we took him over by the coffee machine to see Mr. Plemen.

The attitude and conduct of Mr. Pearson toward Mr. Collins was quarrelsome, insubordinate, and definitely not becoming an Amtrak employee."

Again, cross-examination was ineffective.

Rule 23 provides in part as follows:

"(a) Employees who have been in service more than 60 calendar days shall not be disciplined or dismissed without a fair and impartial investigation, unless such employees shall accept such dismissal or other discipline in writing and waive formal investigation. Such waiver must be in the presence of a duly accredited representative of the organization. The employees may be held out of service pending such investigation only if their retention in service could be detrimental to themselves, another person, or the Company." (Emphasis ours)

The Organization cites the emphasized language as authority for its position that we should vitiate the assessed discipline because Carrier has not shown that the retention in the service of Claimant at the time he was suspended would have been detrimental to either Claimant, another person of Carrier. We reject this contention for two reasons:

1. Insubordination is a pernicious thing, as is the matter of cheating on break time. Claimant and his co-workers had been instructed not to leave their work stations until breaktime. Carrier was entitled to enforce such rule and was not required to treat the matter as a minor one. To do so would have been detrimental to Carrier's interest.

2. The only penalty for unauthorized suspension of an employe is compensation for time lost if no suspension was proper. We hold that some suspension was proper under the circumstances.

We further hold that Claimant was afforded a fair and proper investigation. The record contains clear and convincing proof that Claimant violated the cited rules, and there is no procedural error to be found. Moreover, the discipline as adjusted by Carrier was reasonable.

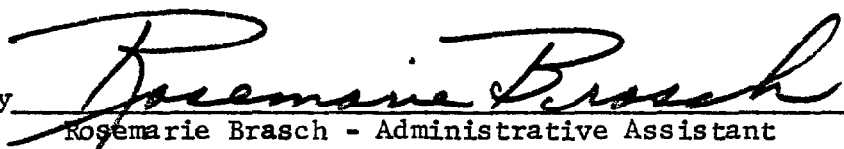
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of July, 1982.